REMARKS

The Final Office Action mailed July 10, 2006, considered and rejected claims 1-26 and 32-44.[1] By this paper, claim 21 and claim 44 have been cancelled, such that claims 1-26 and 32-44 remain pending of which claims 1, 13 and 21 are the only independent claims at issue. Applicant respectfully submits that the claim amendments are supported by the disclosure in the specification, including at least the disclosure in ¶¶ 21, 38-39, as well as newly omitted portions of claim 44.

As reflected above, in the claims listing, the claims are directed towards embodiments for scheduling advertising campaigns to achieve advertising impression goals and for weighting advertisements.

Claim 1, for example, recites an embodiment in which a server computing system receives historical data at a planning module, the historical data representing a number and a type of a plurality of advertising impressions of advertisements viewed by one or more target viewers. As claimed, the server computing system receives the historical data in response to a receiver computing system selecting the advertising content for display based at least upon the metadata that was received when the receiver computing system was intermittently connected to the server computing system, displaying the advertising content on a display device connected to the receiver computing system, and transmitting stored records of historic advertising display data. The historical data is then combined with existing campaign data to generate a schedule of available advertising inventory, and such that the advertising impression goal for the advertising campaign is achieved within the timeframe and among the one or more target viewers selected by the advertiser.

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[1] Claims 21-26, 32,33,35-38, 41 were rejected under 35 U.S.C. 102(e) as being anticipated by Carruthers et al.(US 2002/0128904). Claims 1, 3-6, 8-13, 18-20, 44 were rejected under U.S.C. 103(a) as being unpatentable over Carruthers et al. in view of Zigmond et al. (US 6,698,020). Claims 2, 7, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carruthers et al. in view of Zigmone et al and further in view of Cannon. (US 6,286,005). Claims 34, 39-40, 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carruthers et al. in view of Cannon. Although the prior art status of the cited art (other than Zigmond) is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

Claim 13 is directed to a computer program product having computer-executable instructions for implementing the method recited in claim 1.

Claim 21, the only other independent claim, is directed to a corresponding embodiment for weighting scheduled advertisements, and that includes a step for identifying an advertising impression goal for the display of an advertisement to at least one target viewer, a step for defining a weight for the advertisement based upon the advertising impression goal and the available advertising inventory, wherein the weight defines the display frequency of the advertisement to achieve the advertising impression goal, and wherein a receiver computing system, which receives the advertisement, interprets the weight of the advertisement based upon advertisements available to the receiver computing system that meet target criteria corresponding with current viewer characteristics for committed and non-committed advertisements, respectively.

Initially, it will be noted that most of the claim rejections in the last office action were based at least in part on a reliance of the newly cited Zigmond reference. The new Zigmond reference was specifically recited in the last Office Action to compensate for acknowledged deficiencies within the other cited art with regard to the recited claim elements corresponding to the gathering of statistical information at the receiver and determining flexible and absolute weights for advertisements at the receiver.

While some of the claim rejections did not rely directly on Zigmond, all of the pending claims have now been amended (through at least incorporation to amended claim 21) to include limitations for which the Zigmond reference was specifically relied upon.[2] Applicants respectfully submit, however, that the Zigmond reference is an improper reference for 103 obviousness rejections. In particular, Zigmond qualifies as prior art, if at all as 102(e) art, having been published and issued only after the filing date of the present application. Zigmond was also commonly assigned to, or subject to an assignment to, WebTV Networks (and now Microsoft Corp.), the assignee of the present application and at the time of the present invention. Accordingly, based on statutory guidelines defined in 35 U.S.C. § 103(c), Zigmond cannot qualify as prior art in rejecting the claims of the present application based on obviousness.

[2] In particular, limitations cancelled from claim 44, which were rejected at least in part on Zigmond, have been added to claim 21.

Accordingly, inasmuch as all of the claims include limitations for which the Zigmond reference was *arguably* relied upon, and inasmuch as Zigmond has been disqualified as a valid prior art obviousness reference, Applicants respectfully submit that all of the rejections of record are now moot.

In view of the foregoing, Applicants respectfully submit that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicants acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicants reserve the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicants specifically request that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record.

Although it is not necessary to address any of the other specific rejections to the claims, Applicants reassert that Carruthers fails to teach or suggest weights as defined in the claims and as interpreted in view of the specification. Claim 21, for example, requires that "the weight defin[es] the display frequency of the advertisement to achieve the advertising impression goal." While the Examiner cites to Carruthers for teaching the use of "weight" in an advertising campaign, it should be noted that Carruthers never defines weights in the manner claimed. The only reference to weight in Carruthers is

> The order [in which advertisements are to be displayed] is based preferably both upon priority and *some weighting mechanism* that indicates how many impressions are needed by each campaign.

(See Carruthers ¶ 34 (emphasis added). In view of this extremely limited disclosure regarding "weights", Carruthers is a completely inadequate reference for anticipating the recited claim. In particular, Carruthers clearly fails to disclose or suggest that the weights assigned to the advertisements define the display frequency of the advertisements. Instead, and at most, a weighting mechanism is used in Carruthers to determine how many impressions are desired or needed, not the frequency in which an advertisement will actually be displayed. This disclosure

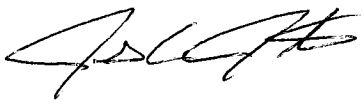
can only be reasonably interpreted as suggesting that weights are used in Carruthers to determine a preferred order of displaying advertisements, not the *frequency* for displaying the advertisement.

Finally, Applicants reassert that Carruthers fails to teach or suggest that the advertisements are defined as absolute and flexible advertisements, and particularly wherein the "flexible advertisement is an advertisement that operates as a filler advertisement to be displayed when advertising inventory exists in excess of advertising utilized by the committed advertisement." In contesting this point, the Examiner has referenced paragraph 75 of Carruthers corresponding to filler impressions that can be used "when the user is not eligible for any active campaign and there is no content available for the user." Noteably, this type of filler advertisement should not be considered analogous to the claimed flexible advertisements inasmuch as Carruthers filler impressions clearly do not correspond to advertising inventory that exists in excess of the advertising that **is utilized** by the committed advertisement and when there is other content available (e.g., the committed advertisements). Instead, and to the contrary, Carruthers filler impressions only appears to apply "when the user is **not** eligible for any active campaign **and there is no content available** for the user."

For at least the foregoing reasons, Applicants respectfully submit that the present invention is distinguished from the cited combination of art. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 10th day of September, 2006.

Respectfully submitted,



RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44,803
Attorneys for Applicant
Customer No. 047973

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